



DEPARTMENT OF LAW  
OFFICE OF THE  
Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

November 26, 1976

R76-418  
Harris

BRUCE E. BABBITT  
ATTORNEY GENERAL

76-315

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Honorable Henry Haws, Chairman  
Maricopa County Board of Supervisors  
111 South 3rd Avenue  
Phoenix, Arizona 85003

Dear Mr. Haws:

Re: R76-418

By letter of October 4, 1976, you referred to this office a request for a legal opinion first submitted on August 20, 1976 to Maricopa County Attorney Donald W. Harris. Mr. Harris' letter in response suggested that you seek an original opinion from this Office. Mr. Harris' letter incorrectly suggests that it should be the role of this Office to set out the parameters of new powers granted Boards of Supervisors by enactment of Laws 1976, Ch. 115 [adding § 11-251(35)]. However, Mr. Harris rightly concluded that his earlier representation of owners of "massage establishments" posed an ethical conflict precluding his answering questions about the effect of the aforementioned legislation. In this circumstance, we are not reluctant to answer your request of October 4.

We have learned that the Legislative Council considers Laws 1976, Ch. 115 (originally Senate Bill 1356) to have been enacted in violation of Art. IV, pt. 2, § 14, of the Arizona Constitution. The Council has responsibility for determining the propriety--in a technical sense--of legislative enactments, and we believe the Council is correct in this conclusion about Ch. 115. As an unconstitutional enactment, Ch. 115 is a nullity and of no force or effect.

The defect in the enactment of S.B. 1356 (the antecedent of Ch. 115) was its failure on the date of enactment (June 24, 1976) to set forth the complete text of A.R.S. § 11-251. The failure was occasioned by the enactment of House Bill 2180 with an emergency clause on May 26, 1976. That enactment is Ch. 56, Laws 1976, and it modified A.R.S. § 11-251. In other words, on May 26, the text of § 11-251 was changed, but S.B. 1356 was not rewritten to conform to that change. Thus, when S.B. 1356 was itself enacted on June 24, it violated Art. IV, pt. 2, § 14, of our Constitution, which states:



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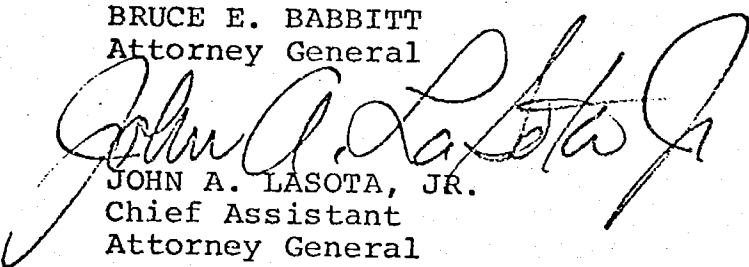
No Act or section therefor shall be revised or amended by mere reference to the title of such Act, but the Act or section as amended shall be set forth and published at full length.

Ms. Sandra Day, Director of the Legislative Council, has prepared a draft bill for introduction in the upcoming session of the 33rd Legislature to correct this error.

I have enclosed the page of that draft pertinent to this opinion (see Section 1). Perhaps you may wish to contact Ms. Day at 271-4236 for further details.

Yours truly,

BRUCE E. BABBITT  
Attorney General



JOHN A. LASOTA, JR.  
Chief Assistant  
Attorney General

JAL:gs  
Enc.

cc: Ms. Sandra Day